Supreme Court, U.S.
FILED
JUL 3 2001
CLERK

No. 00-1803

IN THE

Supreme Court of the United States

JULIE BROWN,

Petitioner,

v.

KNOX COUNTY, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE TENNESSEE COURT OF APPEALS

BRIEF FOR RESPONDENTS KNOX COUNTY AND LILLIAN BEAN, IN HER OFFICIAL CAPACITY AS FORMER CLERK OF THE COURT

MICHAEL W. MOYERS
Knox County Law Director
JOHN E. OWINGS*
Chief Deputy Law Director
400 Main Avenue, Suite 612
Knoxville, TN 37902
(865) 215-2327

Attorneys for Knox County and Lillian Bean, in her official capacity as former Clerk of Court

* *Counsel of Record*

167921

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1.

Whether Petitioner may appeal to this Court a state appellate court decision made adequately and independently on state law grounds.

2.

Whether Petitioner properly may raise an issue on appeal to this Court that was not raised by Petitioner before the state court below and that has not been addressed by the state court below.

3.

Whether the Tennessee statute requiring misdemeanants to pay any applicable jailers' fees in addition to the fines for their crimes was implicitly repealed by a statute which states that a portion of the penalty for driving under the influence of drugs or alcohol (DUI) shall be used to reimburse jailers for the cost of incarcerating DUI misdemeanants.

TABLE OF CONTENTS

	Page
Questions Presented	i
Table of Contents	ii
Table of Cited Authorities	iv
Statement of Jurisdiction	1
Constitutional Provision Involved	3
Statement of the Case	4
Reasons for Denying the Writ	6
I. The Judgment Of The State Appellate Court Below Rests Independently And Adequately Upon State Law Grounds And Therefore Is Outside The Jurisdiction Of This Court.	7
II. The Issue Petitioner Brings To This Court Has Not Been Addressed By The State Appellate Courts, Because Petitioner Failed To Raise A Due Process Claim Before The Court Of Appeals Of Tennessee.	9
III. The State Courts Below Properly Interpreted The State Statutes At Issue.	10
A. The interpretation of the reimbursement provision offered by the Court of Appeals of Tennessee meets the legislative purposes of Tenn. Code Ann. § 55-10-403 and of the rest of Tennessee's DUI enforcement scheme.	11

Contents

Page

1. The reimbursement provision prevents the shifting of incarceration costs to the counties, which is barred by the Tennessee Constitution. ... 11

2. Granting a benefit to DUI offenders that is not shared by other misdemeanants is contrary to the intent of the Tennessee legislature to treat DUI offenders more harshly than other misdemeanants. 12

B. The interpretation of Tenn. Code Ann. §§ 55-10-403 and 8-20-106 offered by the state courts is consistent with the rest of the state criminal code. 12

C. The plain meaning of Tenn. Code Ann. § 55-10-403(a)(2) requires only that sheriffs are reimbursed with some portion of the monies collected from DUI offenders and does not implicitly repeal the jailers' fee statute as it applies to DUI offenders. 13

Conclusion 15

Appendix — Relevant Documents 1a

TABLE OF CITED AUTHORITIES

Page

Cases:

Adams v. Robertson, 520 U.S. 83 (1997) 1, 2, 9

Allstate Ins. Co. v. Watts, 811 S.W.2d 883 (Tenn. 1991) 15

Bearden v. Georgia, 461 U.S. 660 (1983) 4

Beck v. Washington, 369 U.S. 541 (1962) 1, 9

Brown v. Knox County, 39 S.W.3d 585 (Tenn. App. 2000) 2, 5, 7

Brown v. Tidwell, 169 F.3d 330 (1999) 2, 4, 6

Central Union Tel. Co. v. Edwardsville, 269 U.S. 190 (1925) 10

Daniels v. Alcoa, 732 F. Supp. 1467 (E.D. Tenn. 1989) 12

Hartford Life Ins. Co. v. Johnson, 249 U.S. 490 (1919) 10

Hathorn v. Lovorn, 457 U.S. 255 (1982) 8

Illinois v. Gates, 462 U.S. 213 (1983) 1, 7

Knox County v. City of Knoxville, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988) 2, 5, 15

Cited Authorities

	Page
Memphis Natural Gas Co. v. Beeler, 315 U.S. 649 (1942)	9
Michigan v. Long, 463 U.S. 1032 (1983)	7
Miles v. Davidson County, No. 99-1096-III (Davidson County (Tenn.) Chancery Oct. 20, 1999)	2
Morris v. Snodgrass, 886 S.W.2d 761 (Tenn. App. 1994)	11
State v. Dye, 715 S.W.2d 36 (Tenn. 1986)	4
Stenberg v. Carhart, 530 U.S. 914 (2000)	14
Street v. New York, 394 U.S. 576 (1969)	2
United States v. United Continental Tuna Corp., 425 U.S. 164 (1976)	14
Washington County Board of Education v. Marketamerica, Inc., 693 S.W.2d 344 (Tenn. 1985)	5
West Virginia University Hospitals v. Casey, 499 U.S. 83 (1991)	14
Wilson v. Garcia, 471 U.S. 261 (1985)	2
Yee v. City of Escondido, 503 U.S. 519 (1992)	1, 7

Cited Authorities

Page

Statutes:

28 U.S.C. § 1257(a) 1

42 U.S.C. § 1983 ..... 2, 4, 5

Tenn. Code Ann. § 8-20-106 12

Tenn. Code Ann. § 8-26-105 ..... 5, 13, 14

Tenn. Code Ann. § 28-3-104 2

Tenn. Code Ann. § 40-15-105(a)(1)(B)(i)(*c*) 12

Tenn. Code Ann. § 40-35-111 12

Tenn. Code Ann. § 40-35-111(e)(1) 13

Tenn. Code Ann. § 40-35-303 4

Tenn. Code Ann. § 55-10-401 4

Tenn. Code Ann. § 55-10-403 ..... 11, 12, 13

Tenn. Code Ann. § 55-10-403(a) 6

Tenn. Code Ann. § 55-10-403(a)(2) 5, 8, 13

Tenn. Code Ann. § 55-10-403(m) 12

Tenn. Pub. Acts 891 ..... 5, 11

Cited Authorities

Page

Rules:

Tenn. R. App. P. 13(b) 8, 9

Tenn. R. Sup. Ct. 4(H)(1) 15

United States Supreme Court Rule 14(g)(i) 6

United States Supreme Court Rule 15.2 ..... 4, 5

Other Authority:

Tenn. Const. art. II, § 24 ..... 3, 11

STATEMENT OF JURISDICTION

Petitioner asserts that this Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1257(a) (1993), based upon the interpretation of the state statutes at issue offered by the Court of Appeals of Tennessee. However, Petitioner cannot meet her burden of demonstrating that the decision of the state court meets the jurisdictional requirements of this Court.

First, as this Court has stated, its jurisdiction to review state court judgments requires that the state court's decision be made on federal law, not state law, grounds. *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992); *see also Illinois v. Gates*, 462 U.S. 213, 218-220 (1983). "In the context of direct review of a state court judgment, the independent and adequate state court ground doctrine is jurisdictional." *City of Escondido*, 503 U.S. at 533. Since the Court of Appeals of Tennessee relied entirely upon independent and adequate state law grounds to decide this case and made no ruling on the federal claim belatedly raised here, Petitioner's due process issue lies outside the jurisdiction of this Court.

Second, this Court requires that an issue be presented to and addressed by the highest state court before the issue may be properly raised before this Court. *Adams v. Robertson*, 520 U.S. 83, 86-87 (1997); *Beck v. Washington*, 369 U.S. 541 (1962). Here, because Petitioner failed to raise or brief the due process claim on appeal below, the Court of Appeals of Tennessee did not address Petitioner's due process claim. Therefore, Petitioner's due process claim is not properly before this Court.

Additionally, this Court requires petitioners to demonstrate that invalid state statute claims were timely brought to a state court. *See, e.g., Adams v. Robertson*, 520 U.S. 83, 88 (1997); *Street v. New York*, 394 U.S. 576, 585 (1969). Here, Petitioner filed her initial complaint some three years after completing payment of the penalties imposed upon her for violating the DUI laws of Tennessee. Knox County has continuously asserted that Petitioner's 42 U.S.C. § 1983 (1993 & Supp. 2000) cause of action is barred by the one year statute of limitations of Tenn. Code Ann. § 28-3-104 (2000). *See Wilson v. Garcia*, 471 U.S. 261 (1985) (holding that the statute of limitations for a 42 U.S.C. § 1983 action is the applicable state statute).

Finally, this matter does not involve any conflict between state and federal courts or even among the courts of Tennessee. Both the United States District Court for the Eastern District of Tennessee and the United States Court of Appeals for the Sixth Circuit held that this issue was one of state law. *See Brown v. Tidwell*, 169 F.3d 330, 332 (1999). The statutes at issue have been interpreted consistently by numerous Tennessee courts, including the Chancery Courts of Davidson, Shelby and Knox counties and both the Eastern and Western Sections of the Court of Appeals of Tennessee. *See Brown v. Knox County*, 39 S.W.3d 585 (Tenn. App. 2000); *Knox County v. City of Knoxville*, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988); *Miles v. Davidson County*, No. 99-1096-III (Davidson County (Tenn.) Chancery Oct. 20, 1999); *Brown v. Knox County*, No. 142569-2 (Knox County (Tenn.) Chancery Oct. 4, 1999).

Therefore, Respondent respectfully asserts that Petitioner cannot satisfy the jurisdictional requirements of this Court and thus this Court need not exercise jurisdiction over this matter.

CONSTITUTIONAL PROVISION INVOLVED

Tenn. Const. art. II, § 24.

No public money shall be expended except pursuant to appropriations made by law. Expenditures for any fiscal year shall not exceed the state's revenues and reserves, including the proceeds of any debt obligation, for that year. No debt obligation, except as shall be repaid within the fiscal year of issuance, shall be authorized for the current operation of any state service or program, nor shall the proceeds of any debt obligation be expended for a purpose other than that for which it was authorized. In no year shall the rate of growth of appropriations from state tax revenues exceed the estimated rate of growth of the state's economy as determined by law. No appropriation in excess of this limitation shall be made unless the General Assembly shall, by law containing no other subject matter, set forth the dollar amount and the rate by which the limit will be exceeded. Any law requiring the expenditure of state funds shall be null and void unless, during the session in which the act receives final passage, an appropriation is made for the estimated first year's funding. No law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost. An accurate financial statement of the state's fiscal condition shall be published annually.

STATEMENT OF THE CASE

Petitioner was arrested in Knox County, Tennessee for driving under the influence of alcohol in violation of Tenn. Code Ann. § 55-10-401 on November 15, 1995. Petitioner pled guilty to this offense and paid the seventy-seven dollar ($77) jailers' fee at issue on February 16, 1996, in addition to a fine of three hundred and fifty dollars ($350).[1] Petitioner served two days in jail and did not appeal her plea, sentence, fine or fees.

Petitioner, along with plaintiffs from two other Tennessee counties, initially brought a 42 U.S.C. § 1983 action against the court clerks from three Tennessee counties in the United States District Court for the Eastern District of Tennessee in 1997. *See Brown v. Tidwell*, 169 F.3d 330 (1999). The federal suit alleged that the court clerks had violated due process by collecting both the DUI fine and a jailers' fee from the plaintiffs. On grounds different from the district court, the Court of Appeals for the Sixth Circuit upheld the district court's dismissal of the suit, holding that "an authoritative decision of the Tennessee courts about the practice would moot the plaintiffs' constitutional claim." *Id.* at 332. Petitioner did not file a petition for certiorari from this decision.

---

1. Pursuant to Rule 15.2 of the Supreme Court Rules, Respondent asserts that contrary to Petitioner's statement of the case, court clerks generally do not persist "in a pattern of incarcerating or threatening to incarcerate offenders for their inability to pay. . . ." Instead, *if* the court makes payment of fees a condition of the offender's probation, pursuant to Tenn. Code Ann. § 40-35-303 (1997 & Supp. 2000), and *if* the offender willfully refuses to pay fees, the court may revoke probation, resulting in incarceration. *See State v. Dye*, 715 S.W.2d 36, 39-40 (Tenn. 1986) (citing *Bearden v. Georgia*, 461 U.S. 660, 667-68 (1983)).

Petitioner filed the instant suit in the Chancery Court for Knox County, Tennessee on April 13, 1999, on both state and federal law grounds, requesting class certification. The class was never certified, despite Petitioner's clearly erroneous drafting of the issue presented to this Court, which indicates that a class of thousands exists. The Chancery Court awarded summary judgment to Knox County, finding that a 1988 decision by the Court of Appeals of Tennessee had previously interpreted the statutes at issue to allow the collection of both a DUI fine and jailers' fee. *See Knox County v. City of Knoxville*, 1988 WL 116456 (Tenn. App. Nov. 2, 1988).

Petitioner's only support for her 42 U.S.C. § 1983 due process cause of action was a 1996 opinion of the Tennessee Attorney General. *See* Tenn. Op. Att'y Gen. U96-071 (1996).[2] While this two (2) paragraph opinion supports Petitioner's contention, such opinions "are not binding authority for legal conclusions, and courts are not required or obligated to follow them." *Washington County Board of Education v. Marketamerica, Inc.*, 693 S.W.2d 344, 348 (Tenn. 1985).

On Petitioner's appeal, the Court of Appeals of Tennessee reviewed the chancery court's interpretation of the statutes at issue de novo.[3] *See Brown v. Knox County*, 39 S.W.3d 585 (Tenn. App. 2000). In accord with their 1988 decision, the court held that Tenn. Code Ann. § 55-10-403(a)(2) does not impliedly release DUI offenders from the application of the jailers' fees statute, Tenn. Code Ann. § 8-26-105.

---

2. Pursuant to Rule 15.2 of the Supreme Court Rules, Respondent clarifies that this opinion was requested more than ten years after the statute at issue became the law of Tennessee. *See* 1982 Tenn. Pub. Acts 891.

3. Petitioner did not appeal the decision of the chancery court to refuse certification of a class.

On appeal to the Supreme Court of Tennessee, certiorari was denied and the court ordered that the opinion of the Court of Appeals of Tennessee be published. Although Petitioner asks this Court to review a state court judgment, Petitioner failed to provide the information required by Rule 14(g)(i) of the Supreme Court Rules.

REASONS FOR DENYING THE WRIT

The issue in this case is a matter of state law — the proper interpretation of a Tennessee statute. As the Court of Appeals for the Sixth Circuit anticipated in dismissing Petitioner's earlier suit against the Knox County Clerk of the Court, the authoritative statutory interpretation offered by the state courts negates the due process issue. "[T]hey are being directed to Tennessee courts for interpretation of Tennessee statutes." *Brown v. Tidwell*, 169 F.3d 330, 332 (6th Cir. 1999). Furthermore, the appellate state courts have not addressed Petitioner's due process claim, which she abandoned on appeal. Therefore, this Court need not exercise its jurisdiction over this case.

Should this Court decide to exercise its jurisdiction, however, Petitioner's suggested interpretation of Tenn. Code Ann. § 55-10-403(a) is contrary to the plain meaning and to the legislative purpose of both this statute and the whole of Tennessee's DUI scheme. In addition, such an interpretation would be inconsistent with the imposition of all other criminal fines under the Tennessee Code.

I.

THE JUDGMENT OF THE STATE APPELLATE COURT BELOW RESTS INDEPENDENTLY AND ADEQUATELY UPON STATE LAW GROUNDS AND THEREFORE IS OUTSIDE THE JURISDICTION OF THIS COURT.

This Court has stated that its jurisdiction to review state court judgments requires that the state court's decision be made on federal law, not state law, grounds. *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992); *see also Illinois v. Gates*, 462 U.S. 213, 218-220 (1983). "In the context of direct review of a state court judgment, the independent and adequate state court ground doctrine is jurisdictional." *City of Escondido*, 503 U.S. at 533. Here, the Court of Appeals of Tennessee relied entirely upon state law grounds to decide this case and made no ruling on the federal claim belatedly raised here in an attempt to obtain certiorari from this Court.

"It is, of course, 'incumbent upon this Court . . . to ascertain for itself . . . whether the asserted non-federal ground independently and adequately supports the judgment.' " *Michigan v. Long*, 463 U.S. 1032, 1038 (1983). However, where the appellate court does not even mention a federal claim or any due process issue, it is clear that the appellate decision was merely a matter of statutory interpretation made independent of federal law considerations.[4]

---

4. The Court of Appeals of Tennessee did not address the federal civil rights claim because Petitioner did not raise it in her brief. *See Brown v. Knox County*, 39 S.W.3d at 586 n.2 (Cont'd)

Furthermore, the statutory interpretation engaged in by the Court of Appeals of Tennessee adequately responded to the only issue presented by Petitioner: "Whether the chancery court erroneously interpreted T.C.A. § 55-10-403(a)(2) when it disagreed with a Tennessee Attorney General's opinion holding that this statute requires clerks of court to reduce jail fees imposed on persons convicted of violating Tennessee's DUI statute by the amount of any fine imposed." (*See* App. at 2a.) Similarly, Petitioner's appeal to the Supreme Court of Tennessee failed to raise an issue of federal law. (*See* App. at 4a.)

In addition, this Court has "recognized that the failure to comply with a state procedural rule may constitute an independent and adequate state ground barring our review of a federal question." *Hathorn v. Lovorn*, 457 U.S. 255, 262 (1982). The Tennessee Rules of Appellate Procedure state, "Review generally will extend only to those issues presented for review." Tenn. R. App. P. 13(b) (2000). Petitioner did not present a federal due process claim for review. Although Tennessee appellate courts may exercise discretionary review over issues not presented in some situations, the court below did not address due process in this case. Therefore, Petitioner's failure to request review of her federal law issue in the Tennessee appellate courts constitutes an independent and adequate state ground barring review of this issue.

(Cont'd)

("The complaint also alleges deprivation of property without due process of law and under color of state law in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article 1, Section 8 of the Tennessee Constitution. These aspects of the complaint are not at issue on the instant appeal."). Neither did Petitioner argue that Ms. Bean was not entitled to qualified immunity. In the absence of a civil rights claim, no claim lies against Ms. Bean in her individual capacity.

II.

THE ISSUE PETITIONER BRINGS TO THIS COURT HAS NOT BEEN ADDRESSED BY THE STATE APPELLATE COURTS, BECAUSE PETITIONER FAILED TO RAISE A DUE PROCESS CLAIM BEFORE THE COURT OF APPEALS OF TENNESSEE.

For an issue to be properly raised before this Court, this Court requires that the issue be presented to and addressed by the highest state court. *See, e.g., Adams v. Robertson*, 520 U.S. 83, 86-87 (1997); *Beck v. Washington*, 369 U.S. 541 (1962); *Memphis Natural Gas Co. v. Beeler*, 315 U.S. 649, 651 (1942).

> With "very rare exceptions," we have adhered to the rule in reviewing state court judgments under 28 U.S.C. § 1257 that we will not consider a petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision we have been asked to review.

Robertson, 520 U.S. at 86 (internal citation omitted).

"It is not enough that an appellant could have launched his attack upon the validity of the statute itself as applied; if he has failed to do so we are without jurisdiction over the appeal." *Beeler*, 315 U.S. at 651. Here, because Petitioner failed to raise or brief the due process claim on appeal below as required by Rule 13(b) of the Tennessee Rules of Appellate Procedure, the Court of Appeals of Tennessee did not address the due process claim.

Only where a state's rules do not afford reasonable opportunity of a hearing or where the rules were applied in a discriminatory manner to evade the claim has this Court entertained a federal claim not raised or addressed below. *See, e.g., Central Union Tel. Co. v. Edwardsville*, 269 U.S. 190, 194-195 (1925); *Hartford Life Ins. Co. v. Johnson*, 249 U.S. 490, 493 (1919). No such allegation has been made here. Therefore, Petitioner's due process claim is not properly before this court.

III.

THE STATE COURTS BELOW PROPERLY INTERPRETED THE STATE STATUTES AT ISSUE.

Should this Court decide to exercise its jurisdiction over this matter, Respondent asserts that the courts of Tennessee have properly interpreted the statutes at issue, according to the plain meaning of the statutes, to the legislative purpose of the statutes and to the public policy of maintaining consistency within the criminal code of Tennessee.

A. The interpretation of the reimbursement provision offered by the Court of Appeals of Tennessee meets the legislative purposes of Tenn. Code Ann. § 55-10-403 and of the rest of Tennessee's DUI enforcement scheme.

1. The reimbursement provision prevents the shifting of incarceration costs to the counties, which is barred by the Tennessee Constitution.

The Tennessee Constitution states, "No law of general application shall impose increased expenditure requirements on cities and counties unless the General Assembly shall provide that the state shall share the cost." Tenn. Const. art. II, § 24. In 1982, the General Assembly of Tennessee passed a sweeping overhaul of the state's DUI penalties law. *See* 1982 Tenn. Pub. Acts 891. In addition to a new requirement of mandatory jail time for all DUI offenders, the act required that the sheriff be reimbursed for the cost of these incarcerations.

This reimbursement provision was included to prevent an unconstitutional shifting of all expenses related to the mandatory jail sentences to the counties. *See Morris v. Snodgrass*, 886 S.W.2d 761, 762-63 (Tenn. App. 1994) (holding that statutory requirement of reimbursement to sheriff fulfills state's constitutional duty to share the expenses of mandatory DUI incarceration). Therefore, the Knox County clerk's imposition of jailers' fees upon Petitioner avoids the constitutional mischief that the General Assembly sought to prevent when it included the reimbursement provision.

2. Granting a benefit to DUI offenders that is not shared by other misdemeanants is contrary to the intent of the Tennessee legislature to treat DUI offenders more harshly than other misdemeanants.

Petitioner has mistaken what was intended to be a cost-shifting mechanism for government entities to be a special benefit granted to DUI offenders. The total penalty imposed upon Petitioner included the same items assessed against any other similarly situated misdemeanant — both a statutory fine and a jailers' fee. As a comparison of the penalties and pre-trial diversion available to other misdemeanants demonstrates, DUI offenders are subject to stiffer penalties than other misdemeanants. For example, the fines for other misdemeanants are generally lower than that of DUI offenders. *Cf.* Tenn. Code Ann. § 40-35-111 *with* § 55-10-403. In addition, pretrial diversion is not available to DUI offenders. Tenn. Code Ann. § 40-15-105(a)(1)(B)(i)(*c*) (1997 & Supp. 2000). "This exceptional treatment of DUI cases clearly manifests a legislative policy treating DUI offenses more seriously than other misdemeanors." *Daniels v. Alcoa*, 732 F. Supp. 1467, 1473 n.6 (E.D. Tenn. 1989). This legislative purpose would not be met if Petitioner's fine had been reduced by the amount of her jailers' fee.

B. The interpretation of Tenn. Code Ann. §§ 55-10-403 and 8-20-106 offered by the state courts is consistent with the rest of the state criminal code.

DUI is a Class A misdemeanor in Tennessee. Tenn. Code Ann. § 55-10-403(m). Class A misdemeanants may be subject to fines, imprisonment or both. Tenn. Code Ann.

§ 40-35-111(e)(1). The county legislative body may fix the amount of jailers' fees applied to misdemeanants. Tenn. Code Ann. § 8-26-105. Nothing within the Tennessee Code provides that the amount of misdemeanants' fine is somehow altered by the amount of the jailers' fees charged to offenders.

Plaintiff suggests that her fine should be lowered by the amount of her jailers' fee. If the legislature had intended for DUI offenders to receive a benefit to which other misdemeanants do not have access, the DUI statute would reflect this choice. Nothing in the Tennessee Code requires that DUI misdemeanants not be charged a jailers' fee, as are all similarly situated misdemeanants. Therefore, the interpretation of Tenn. Code Ann. § 55-10-403 offered by the state courts is consistent with the rest of Tennessee's criminal code and does not offend the United States Constitution.

C. The plain meaning of Tenn. Code Ann. § 55-10-403(a)(2) requires only that sheriffs are reimbursed with some portion of the monies collected from DUI offenders and does not implicitly repeal the jailers' fee statute as it applies to DUI offenders.

The provision at issue here states, "A portion of any fine imposed upon a person *for* a violation of this section, up to the maximum fine actually imposed, shall be returned to the sheriff. . . ." Tenn. Code Ann. § 55-10-403(a)(2) (1993 & Supp. 2000) (emphasis added). In accord with the plain language of this statute, the Knox County clerk returned to the sheriff a portion of the total penalty imposed upon Plaintiff *for* her DUI offense.

As this Court has noted, "the purpose of a statute includes not only what it sets out to change, but also what it resolves to leave alone." *West Virginia University Hospitals v. Casey*, 499 U.S. 83, 98 (1991). Here, the Tennessee General Assembly acted to ensure that sheriffs are reimbursed for the cost of incarcerating DUI offenders for constitutional reasons. However, contrary to Petitioner's assertion, the legislature did not implicitly repeal Tenn. Code Ann. § 8-26-105 (1993), the jailers' fee statute, as it applies to DUI offenders.

"It is, of course, a cardinal principle of statutory construction that repeals by implication are not favored." *United States v. United Continental Tuna Corp.*, 425 U.S. 164, 168 (1976). However, that is exactly what Petitioner asks of this Court. Here, the Tennessee General Assembly did not choose language that would have required the county clerk to reduce the amount of DUI offenders' fines by the amount of the applicable jailers' fees. The legislature did not even imply this result, by using such language as "a portion of any fine imposed . . . *under* this section. . . ." In the absence of any statutory language instructing county clerks to stop collecting jailers' fees for Class A misdemeanants who are DUI offenders, the practice has lawfully and constitutionally continued.

Petitioner's reliance upon a poorly drafted opinion of the state attorney general that ignored state appellate court precedent on this issue is misplaced. "This Court's case law makes clear that we are not to give the [state] Attorney General's interpretative views controlling weight." *Stenberg v. Carhart*, 530 U.S. 914, 940 (2000) (finding a Nebraska state law to be unconstitutional, contrary to the opinion of the state attorney general).

Additionally, the cited attorney general opinion failed to acknowledge the Court of Appeals of Tennessee decision interpreting the reimbursement provision. *See Knox County v. City of Knoxville*, 1988 WL 116456 (Tenn. Ct. App. Nov. 2, 1988). While this opinion was unreported, Tennessee courts consider such decisions to be persuasive authority. Tenn. R. Sup. Ct. 4(H)(1) (2000); *see also Allstate Ins. Co. v. Watts*, 811 S.W.2d 883, 886 n.2 (Tenn. 1991) (citing an unpublished case despite "the general rule that unpublished opinions should not be cited in published opinions."). Petitioner's constitutional argument that she had no notice of the additional seventy-seven dollar ($77) jailers' fee that was part of her criminal penalty ignores the existence of this case law and the plain language of the jailers' fee statute.

CONCLUSION

For the foregoing reasons, the Petition for Certiorari should be denied.

Respectfully submitted,

MICHAEL W. MOYERS
Knox County Law Director
JOHN E. OWINGS*
Chief Deputy Law Director
400 Main Avenue, Suite 612
Knoxville, TN 37902
(865) 215-2327

Attorneys for Knox County and Lillian Bean, in her official capacity as former Clerk of Court

* *Counsel of Record*

APPENDIX

APPENDIX — RELEVANT DOCUMENTS

IN THE
TENNESSEE COURT OF APPEALS

Case No. E1999-01185-COA-R3-CV

JULI BROWN, et al on behalf of herself and all others similarly situated,

Plaintiff-Appellant,

vs.

KNOX COUNTY and LILLIAN BEAN,

Defendant-Appellee.

On Appeal from the Knox County Chancery Court Trial Court Number: 142569-2

BRIEF OF PLAINTIFF-APPELLANT

A. JAMES ANDREWS
Andrews + Hudson, P.C.
Suite 202
606 Main Street
Knoxville, TN 37902
(865) 525-4200
STEVEN OBERMAN
Daniel & Oberman
Suite 950
550 Main Street
Knoxville, TN 37902
(865) 546-4292

ORAL ARGUMENT REQUESTED

Appendix

ISSUE PRESENTED FOR REVIEW

Whether the chancery court erroneously interpreted T.C.A. § 55-10-403 (a) (2) when it disagreed with a Tennessee Attorney General's opinion holding that this statute requires clerks of court to reduce jail fees imposed on persons convicted of violating Tennessee's DUI statute by the amount of any fine imposed.

Appendix

IN THE
TENNESSEE COURT OF APPEALS

Case No. _____

JULI BROWN, et al on behalf of herself and all others similarly situated,

Plaintiff-Appellant,

vs.

KNOX COUNTY and LILLIAN BEAN,

Defendant-Appellee.

On Appeal from the Tennessee Court of Appeals
Number: E1999-01185-COA-R3-CV

BRIEF OF PLAINTIFF-APPELLANT

A. JAMES ANDREWS
194B Market Place Boulevard
Knoxville, TN 37922
(865) 691-5166
STEVEN OBERMAN
Daniel & Oberman
Suite 950
550 Main Street
Knoxville, TN 37902
(865) 546-4292

ORAL ARGUMENT REQUESTED

Appendix

ISSUE PRESENTED FOR REVIEW

Whether the lower courts can ignore the plain meaning of a criminal statute in order to construe the statute against the defendant and in favor of the state.